In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 413

CITY OF DETROIT, a Michigan Municipal Corporation, and COUNTY OF WAYNE, a Michigan Constitutional Body Corporate, PETITIONERS

v.

THE MURRAY CORPORATION OF AMERICA, a Delaware Corporation, and THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This suit was brought by the Murray Corporation of America for the recovery of *ad valorem* personal property taxes assessed against it by the City of Detroit and County of Wayne, Michigan, as of January 1, 1953, in the amounts of $67,714.96 and $12,572.66, respectively. The United States petitioned for leave, and was allowed, to intervene

for the reason that, claiming the ownership of the property on which the assessment was based, it had an interest in the litigation which it was entitled to protect.

The basic questions in the case are: (1) Did the United States own the personal property in question when the assessment was made, where the Murray Corporation contract provided that upon the making of partial payments to the corporation —and such payments were made prior to tax day— title to all material and work in progress should vest in the United States, and (2) was the Murray Corporation the real party in interest and the proper party plaintiff for purposes of a suit to recover the disputed taxes?

The District Court for the Eastern District of Michigan answered both of the questions in the affirmative and held that, because the property was that of the United States and immune from taxation by any state, the plaintiff was entitled to recover.

Within the appropriate time limits the City of Detroit and County of Wayne filed notices and docketed their appeals with the Court of Appeals for the Sixth Circuit. The case is now pending in that court, having been neither briefed nor argued.

Petitioners seek to have this Court issue a writ of certiorari to review the pending case before judgment is given in the Court of Appeals. To support their request for the extraordinary use of the writ, "a power not ordinarily to be exercised" (see *The Three Friends,* 166 U. S. 1, 49), peti-

tioners urge the following: (1) No serious question of fact is involved; (2) a large number of similar cases are pending; (3) important constitutional issues are presented; (4) early settlement of procedures to be followed by federal and local governments is needed; and (5) taxpayers are entitled to have existing confusion resolved.

We think that petitioners have failed to show that this case is one "of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court". Rule 20, Revised Rules of this Court. The reasons which petitioners advance are not unusual. They are frequently, if not usually, to be found in litigation where state or local taxing authorities are endeavoring to tax property or transactions which it is contended are beyond the reach of their powers. There is nothing about this case which suggests that the normal delay in following the usual appellate course would result in irrevocable changes of the *status quo* or work to the irreparable or serious detriment of any party. Compare *Ex parte Quirin*, 317 U. S. 1; *United States* v. *Mine Workers*, 330 U. S. 258; *Youngstown Co.* v. *Sawyer*, 343 U. S. 579.

On the other hand, this Court has in many cases emphasized the extent to which it is aided by having prior consideration and review by the Courts of Appeals. It has denied certiorari for want of such review on more than one occasion. *E.g., United States* v. *Montgomery Ward & Co.*, 324 U. S. 858; *United Steelworkers* v. *United*

States, 344 U. S. 915. In the circumstances, the Government believes that the petition for certiorari fails to set forth sufficient grounds for immediate review of the District Court's decision by this Court, prior to consideration by the Court of Appeals.

Respectfully submitted,

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OCTOBER, 1955.

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Respondent and Plaintiff
and
THE UNITED STATES OF AMERICA, Intervenor

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONSE TO MEMORANDUM FOR THE UNITED STATES

CITY OF DETROIT, a Michigan
Municipal Corporation,
By PAUL T. DWYER,
Its Corporation Counsel, and
JAMES H. LEE,
Assistant Corporation Counsel,
and
COUNTY OF WAYNE, a Michigan
Constitutional Body Corporate,
By GERALD K. O'BRIEN,
Prosecuting Attorney, and
ALBERT E. CHAMPNEY,
Of Counsel,
Petitioners and Defendants.

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RESPONSE TO MEMORANDUM FOR THE UNITED STATES

This response is made to Memorandum of the United States to touch on just two of the elements presented in our Petition. One is completely unanswered (large number of similar cases pending). The other, in connection with our reason for request for early hearing (p. 15), has been dismissed as causing no changes of the status quo.

It is inevitable that this Court will in the very near future have before it a number of like cases appealed from the several Circuits. Our authority comes from the very Brief and Appendix for the United States filed with the trial judge in the District Court, at p. 34:

> "Also, as the Court knows from statements made at the oral argument, recently the Government has been presented with the same basic problem in other jurisdictions. The number of contracts, as well as the amounts involved, is substantially greater than here. No doubt, some of the same arguments will be advanced. Until an authoritative decision has been rendered by a federal court on which is, essentially, a federal question, the problem remains a fairly critical one to the Government and its procuring agencies."

This candid expression regarding the overall litigation was forcefully urged as a consideration for the Court in deciding the first case of the many now pending in this district which involve taxes of upwards of $2,000,000. We submit it applies equally here—particularly as self-answer to the Government's present contention.

As a corollary to the foregoing argument we submit any duplication of effort by this Court and the several Circuits is best avoided and serves as another good reason for this first test to be immediately settled by this Court.

It appears to be the policy of this Court to grant certiorari to avoid the chance of conflicting decisions from the several Circuits where issues of federal law and other showing of public importance is presented. Petitioners submit that such need for uniformity of opinion exists here. (*Carter v. Carter Coal Company,* 298 U. S. 238, 80 L. Ed. 1160; *Norman v. Baltimore and Ohio Railroad Company,* 294 U. S. 240, 79 L. Ed. 885.)

The Government is obviously concerned with the problem which it labelled fairly critical. We do not believe that there is room for distinction between *imperative* and the term *fairly critical* as used in the District Court Brief.

An authoritative decision and, as we see it, an immediate one, is urgently needed at once by three levels of government and their many agencies; otherwise, the conflicting and continuing processes of representatives of the public at each level sincerely performing duties as advised by their counsel will pyramid into a scrap heap of fruitless and wasted time, energy and tax money.

The City and County are not inclined to maintain the passive attitude indicated by the Government's Memorandum in opposition to their Petition. They are concerned with inter-related budgeting, taxing and operating procedures which await the outcome of this litigation. They must gropingly continue to provide local services with revenues from the taxes affected for each year until disposition of the issues presented. Contrary to the claim of no change in status quo or serious detriment herein, in the event of ultimate affirmance of the District Court decision, the delay of another year would result in unnecessary loss by these defendants of what to local governments are large sums in interest.*

While silent for the time being, plaintiff, The Murray Corporation, originally recognized the gravity of the issues involved and opened its main Brief in the District Court with this clarion statement:

"This case is of national importance."

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*$120,000 a year in the case of defendants and an overall loss of possibly $1,000,000 a year based on the Government's statement, above noted, that amounts involved elsewhere are greater than here.

Later, at p. 3, it stated:

> "Because this question is of far-reaching importance to the Federal Government, it has intervened in this action."

CONCLUSION

We therefore, respectfully submit that all counsel are of the same mind up to the point of the degree of public importance of this test case. On that score we trust that pressing urgency has been noted by the Court sufficient to entitle this matter to be considered immediately by granting jurisdiction.

Respectfully submitted,

CITY OF DETROIT, a Michigan
Municipal Corporation,
By PAUL T. DWYER,
Its Corporation Counsel, and
JAMES H. LEE,
Assistant Corporation Counsel,
and
COUNTY OF WAYNE, a Michigan
Constitutional Body Corporate,
By GERALD K. O'BRIEN,
Prosecuting Attorney, and
ALBERT E. CHAMPNEY,
Of Counsel,
Petitioners and Defendants.

October 24, 1955.